

kps

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2912 OF 2011

M/s Shonkh Technology International Ltd.,)
 a Company registered and incorporated)
 under the provisions of Companies Act,)
 1956, 6, Apollo House, First Floor,)
 82/84, B.S. Marg, Fort, Mumbai-400001.)
 Through its Authorised Signatory)
 Shri Nilesh Khobragade.) ..Petitioner

-Versus-

1. State Information Commission,)
 Maharashtra-Konkan Region,)
 Konkan Bhawan, Belapur,)
 Navi Mumbai.)
2. Appellate Authority,)
 Joint Transport Commissioner)
 (Computer), Office of the Transport)
 Commissioner, 3rd and 4th Floor,)
 Administrative Building,)
 Near Dr.Ambedkar Garden,)
 Government Colony, Bandra (East),)
 Mumbai-400051.)
3. Public Information Officer,)
 Deputy Transport Commissioner)
 (Computer), Office of the Transport)
 Commissioner, 3rd and 4th Floor,)
 Administrative Building,)
 Near Dr.Ambedkar Garden,)
 Government Colony, Bandra (East),)
 Mumbai-400051.)
4. Shri Sanjay S/o Anant Bhole,)
 Aged adult, Occupation : Nil,)
 resident of 4, Prayatna Co-operative)
 Housing Society, Nehru Road,)

Near Jalaram Mandir, Thakurli,)
 Dombiwali (East), District : Thane.) ..Respondents

ALONG WITH

WRIT PETITION NO.3137 OF 2011

M/s United Telecom Limited,)
 6-3-649/5, 2nd Floor, Chakkilam House,)
 Somajiguda, Hyderabad-500082.) ..Petitioner

-Versus-

1. The State Information Commission,)
 Maharashtra-Konkan Region,)
 Konkan Bhavan, Belapur,)
 Navi Mumbai-400614.)
2. The Appellate Authority,)
 Joint Transport Commissioner)
 (Computerisation), Office of the)
 Transport Commissioner, 3rd and 4th)
 Floor, Administrative Building,)
 Near Dr.Ambedkar Garden,)
 Government Colony, Bandra (East),)
 Mumbai-400051.)
3. Public Information Officer,)
 Deputy Transport Commissioner)
 (Computer), Office of the Transport)
 Commissioner, 3rd and 4th Floor,)
 Administrative Building,)
 Near Dr.Ambedkar Garden,)
 Government Colony, Bandra (East),)
 Mumbai-400051.)
4. M/s Shonkh Technologies)
 International Ltd.,)
 6, Apollo House, First Floor,)
 82/84, Bombay Sanchar Marg,)
 Fort, Mumbai-400001.)

5. Shri Sanjay S/o Anant Bhole,)
Aged adult,)
resident of 4, Prayatna Co-operative)
Housing Society, Nehru Road,)
Near Jalaram Mandir, Thakurli,)
Dombiwali (East), District : Thane.) ..Respondents

.....
Mr.Sunil Manohar a/w Mr.Deven Chauhan i/b FF. & Associates, for the
Petitioner in Writ Petition No.2912/2011.
Ms.Jayashri P. Akolkar, for the Petitioner in Writ Petition No.3137/2011.
Mr.Sanjay Anant Bhole, the Respondent No.4 in WP No.2912/2011 and
No.5 in WP No.3137/2011, present in person.
.....

CORAM : S.C.DHARMADHIKARI, J.

Reserved on : 17th June, 2011
Pronounced on : 01st July, 2011.

JUDGMENT:

1 These Writ Petitions were heard together. Since common
arguments were canvassed and common questions are involved, they are
disposed of by this judgment.

2 Rule. The Respondents waive service. By consent, heard
forthwith.

3 The petitions impugn the orders dated 23.03.2011 passed by
the State Information Commissioner, Konkan Region. The proceedings are
under the Right to Information Act, 2005 (hereinafter for short referred to
as "RTI Act").

4 The Petitioner in Writ Petition No.2912/2011 is a company
incorporated and registered under the Indian Companies Act, 1956. It

functions as a service provider to the Government of Maharashtra. It provides the facility of Smart Card based Registration Certificate. It is stated that considering the need for computerization, the Government switched over to the latest technology in its various departments. In the transport sector, the Government aimed at modernizing the Regional Transport Offices and introduced a policy to computerize the Regional Transport Offices which was aimed at streamlining the entire process undertaken at these offices and obviously to make the functions of these Regional Transport Offices efficient, prompt and easy. In this backdrop, the Central Government took a policy decision to introduce "Smart Cards" with Micro Processor Chip and it was decided to permit the use of Smart Cards for issuing registration certificates in electronic form. It is stated that this Micro Processor Chip based Smart Card obviously has various advantages over the regular paper based registration books. A reference is made to the Central Government's guidelines issued on 17.10.2001. The implementation of this policy required amendments to the Motor Vehicles Act and Rules and therefore, the amendments were made on 31.05.2002 and Rule 2(s) was added to define the term "Smart Card". It is stated that the registration certificate is now issued to the motor vehicle owners in the form of Smart Cards and thereafter, several provisions of the Motor Vehicles Act have been referred to. It was submitted that the Government of Maharashtra floated a PAN India tender for appointing a service provider to comply with the requirement of issuance of "Smart Cards". The Petitioner participated in the tender process and was declared successful. A contract dated 30.11.2002 came to be executed. It is stated that this is not an ordinary contract, but it is outcome of exhaustive statutory project. The project which the Petitioner is implementing must be seen in the backdrop of the policy decision of the Government to

provide a more standardized and tamper proof registration of the vehicles. The policy of the Government is to adopt a technology which will prevent tampering of registration books by the anti-social elements. It is stated that this contract is confidential in nature. The project has been undertaken by the Petitioner, but attempts are made to exploit the Petitioner for personal gains by various unscrupulous elements. The RTI Act, according to the Petitioner, does not give an absolute right to a person to obtain any information and it is, therefore, contended that the Respondent No.4's attempt to obtain the information must be seen in this light.

5 The Respondent No.4 was desirous of obtaining a copy of the agreement and made an application in the prescribed format to the Respondent No.3 on 21.01.2010. Thereafter, there is response to the said application by the Respondent No.3, namely, Public Information Officer cum Deputy Transport Commissioner (Computer) in the office of the Transport Commissioner. The Respondent No.3 refused to provide the information sought in the application by taking recourse to Section 8(1) (d) of the RTI Act. Aggrieved by this order of the Respondent No.3 passed on 29.01.2010, the Respondent No.4 preferred an appeal and the Appellate Authority disposed of the appeal on 31.03.2010 and he was also of the opinion that the disclosure of the information would be violative of Section 8(1)(d) of the RTI Act. He agreed with the views of the authority below that clause 22(2) of the agreement gives a confidentiality status to the said agreement and therefore, no information contained therein could be made available to the Respondent No.4. Thus, agreeing with the Petitioner, this information was denied.

6 The Respondent No.4 preferred an appeal under Section 19(3) of the RTI Act before the Respondent No.1. The appeal was taken

up on 15.05.2010 and an interim-order was made and the matter was remanded to the first Appellate Authority. Pursuant to this order of remand, the Respondent No.2 reheard the matter and maintained its earlier opinion and disallowed the request for information made by the Respondent No.4. On receipt of this report from the Respondent No.2, the Respondent No.1 heard the matter and by the impugned order, directed the Respondent No.3 to give copies of the Agreements of Transport Department with the Petitioners, to the Respondent No.4 within a period of one month from the date of receipt of the decision. It is this order which is challenged in this petition.

7 Mr.Manohar, learned counsel appearing for the Petitioner in Writ Petition No.2912/2011, invited my attention to the RTI Act and submitted that while providing information is the rule under the Act, but at the same time, there are several exceptions. Thus, the right to information guaranteed by the statute is subject to certain provisions which provide for exemptions from disclosure. Inviting my attention to Sections 8(1)(a) and 8(1)(d) of the RTI Act, Mr.Manohar submits that the information, disclosure of which, leads to incitement of an offence or the information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, should not be given, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. Criticizing the order passed by the Respondent No.1, Mr.Manohar submits that the Respondent No.1 committed a serious error in law while passing the impugned order. Mr.Manohar submits that the Honourable Supreme Court of India in the decision reported in **(2005) 1 SCC 679** (*Association of Registration Plates v/s Union of India and others*), had issued directives that the registration of motor vehicles should be

safety oriented and there should not be any scope for unscrupulous and criminal elements to tamper with registration of the motor vehicles. Mr.Manohar submits that in this decision the Honourable Supreme Court has held that all security features for number plates have to be specified and they are indeed specified. The tender conditions are formulated keeping in mind public interest and the aspects of high security. Mr.Manohar submits that the selection of a single manufacturer for the entire State ensures security. Therefore, the Honourable Supreme Court holds that multiple manufacturers can brush aside these considerations and confidentiality of public database would be severely compromised. All these submissions have been noted by the Honourable Supreme Court and they have been upheld. Mr.Manohar, therefore, submits that this matter cannot be looked at in the ordinary perspective of disclosure of information about a public contract between the State and the Service Provider, but the security considerations are impressed upon the same. By directing the disclosure of information as sought by the Respondent No.4, the Respondent No.1 has ignored Section 8(1)(a) and 8(1)(d) of the RTI Act.

8 Inviting my attention to the application made by the Respondent No.4, in which query No.5 deals with the driving licence Smart Card and optical Smart Card, registration certificate book, making contract and details thereof; Mr.Manohar submitted that these details will be disclosed now and therefore, public interest is in jeopardy and in any event security aspects have not been given serious consideration. For all these reasons, the impugned order be set aside.

9 Mr.Manohar has further invited my attention to the order passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition Nos.598/2009 and 599/2009 in case of the very

same Petitioner wherein the Commission observed that the character of the document is confidential in nature. Therefore, when reliance is placed by the Consumer Disputes Redressal Commission on this very provision of the RTI Act to deny the information and the reasons are given, then, directing the State to provide the copies of such vital documents to the Respondent No.4, in the present case, is contrary to law.

10 On the other hand, the Respondent No.4 who appeared in person in each of these Writ Petitions, invited my attention to his written reply and submitted that he has not done anything so as to violate the letter and spirit of the RTI Act. All that he sought was some information and furnishing of copies of the agreement. There is nothing confidential in the agreement. He submits that a copy of the contract executed by the Petitioner with the Delhi Government has been provided by the office of the Transport Commissioner, Delhi. If the RTI Act is applicable to whole of India, then, one commissionerate cannot take stand contrary to other. This is not a case where public interest demands withholding of the information, rather it mandates disclosure of such information. He points out that by furnishing a copy of this agreement, there is no disclosure of confidential information or secrets, but larger public interest would be served by the disclosure. The Respondent No.4 points out that because of the scheme devised by the Regional Transport Offices across the country, huge profits and financial gains have been amassed by private contractors. For all these reasons and for not any personal gain or benefit, the information was sought and the information has been rightly directed to be provided. Therefore, the Respondent No.4 prays for dismissal of the petitions.

11 With the assistance of the learned counsel appearing for the Petitioners, I have perused the petitions and annexures thereto and

particularly the impugned orders. It is common ground that the Respondent No.4 has sought information on five points relating to the driving licence smart cards and the registration certificate smart cards. The last point, on which the information was sought, is in relation to the agreements with private contractor. The Public Information Officer and the Deputy Transport Commissioner (Computerization) informed the Respondent No.4 that the agreement entered into by the Department with the third parties for providing the driving licence smart cards, optical smart cards and registration book smart cards, cannot be provided as it is governed by Section 8(1)(d) of the RTI Act. This view has been upheld by the Joint Transport Commissioner which is the first Appellate Authority, but reversed by the State Information Commissioner.

12 The reasoning of the State Information Commissioner has been criticized together with this approach of setting out clauses of the agreement in relation to which the information was sought and a copy of which was also requested to be furnished. While not commenting on this course and may be the same was avoidable, yet the ultimate finding and conclusion of the State Information Commissioner cannot be said to be contrary to the RTI Act. The RTI Act is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble of the RTI Act itself refers to this aspect and the constitutional principles enshrined in several articles of the Constitution. It is very clearly postulated that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The revelation of

information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, the RTI Act seeks to harmonize these conflicting interests while preserving the paramount nature of democratic ideals. The definitions and particularly of the term “right to information” defined in Section 2(j) is relevant. By section 3, all citizens have the right to information subject to the provisions of the RTI Act. The obligations of the public authorities are set out by Section 4 and Section 5 provides for designation of the Public Information Officers. The request for obtaining the information is to be made in terms of Section 6 and the disposal of the request is to be made in terms of Section 7. Then comes Section 8, relevant portion, namely, 8(1)(a) and 8(1)(d) of which reads thus:-

“8. Exemption from disclosure of information:-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, --

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b)

(c)

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e)

(f)

(g)

(h)

(i)

(j)

Provided that the information which cannot be denied to

the Parliament or a State Legislature shall not be denied to any person.”

13 I am not in agreement with Mr.Manohar that the absence of the consideration of larger public interest in clause (a) of sub-section (1) of Section 8 is a material and relevant aspect in this matter. This is not a case where clause (a) has been relied upon by anybody or could be relied upon in the given facts and circumstances. On point No.5, the disclosure and the information sought was with regard to execution of any contract with a private service provider for providing the driving licence smart cards, optical smart cards and registration certificate smart cards. The details of such contracts and the copies thereof were sought by the Respondent No.4. By seeking such information and without anything more, a conclusion cannot be reached that this would lead to incitement of an offence. Therefore, this is not a case where clause (a) was in any way applicable. The information was not of the nature contemplated in clause (a) at all.

14 On the own showing of the Petitioner, clause (d) provides that the information can be disclosed if the competent authority is satisfied that larger public interest warrants such disclosure. Therefore, that clause as admitted by Mr.Manohar is not absolute. It does not say that the information including commercial confidence, trade secrets or intellectual property, the disclosure of which, would harm the competitive position of a third party; cannot be demanded or if demanded, cannot be disclosed even if larger public interest warrants the same. The State Information Commissioner has held that the disclosure of both agreements would not result in disclosure of trade secrets or intellectual property. His conclusion is that the tenders were for an important work which affects large number of vehicle owners and drivers of vehicles. The

agreements have to be entered into for providing a service in the form of making of Smart Cards for registration of motor vehicles and driving licences at enhanced fees. Further, the conclusion is that the disclosure of information would enable public scrutiny of the process and contracts and therefore, it is desirable in larger public interest that the information is provided.

15 I am not in agreement with the Petitioners that the conclusion drawn is in any way contrary to Section 8(1)(d). The agreements may contain certain stipulations, so also, certain obligations, but what is sought is a copy of the agreement. It is not the case of the Petitioners that larger public interest does not warrant disclosure of this information. They tried to place the case more on the pedestal of security and safety, so also, confidentiality of interests of those to whom the Smart Cards have been issued. The information sought is not in relation to the individual Smart Cards or registration certificates or details thereof. The information sought is in relation to the decision taken and the policy framed for providing the Smart Cards and if the means to provide the same are by inducting private service providers, then, only details of the agreements executed with such service providers and the copies thereof have been sought. In my view, there was nothing in the information sought by the Respondent No.4, by which commercial confidence, trade secrets or intellectual property is being disclosed, leave alone the disclosure of which would harm the competitive position of a third party or it would lead to incitement of an offence. Merely because the details of the service providers are to be disclosed and the copies of the agreements would be provided, that does not mean that their interests are harmed or their competitive position is affected. It has been rightly pointed out by the Respondent No.4 that some other Transport Commissioners have been providing such details for

the respective territories and States, therefore, there was no need for the Transport Commissionerate for Maharashtra to withhold this information. In these circumstances, it cannot be said that the reasons given by the State Information Commissioner are in any way violative of the provisions pressed into service. I am of the opinion that the State Information Commissioner has acted in consonance with the object and purpose of the RTI Act and upholding the same, has rightly directed the authorities to provide the information sought by the Respondent No.4. His order cannot be said to be vitiated by any error of law or perversity so as to call for interference in writ jurisdiction.

16 Reliance placed by Mr.Manohar on the decision of the National Consumer Disputes Redressal Commission, New Delhi is misplaced. The Consumer Protection Act, 1986 deals with the complaints of consumers with regard to deficiencies and defects in the services rendered by dealers/service providers. It is in the context of the allegations in the complaint and defence taken, so also, the ambit and scope of the provisions of the Consumer Protection Act, 1986 that these observations will have to be seen. The RTI Act has distinct object and purpose as narrated above. Therefore, this decision cannot be of any assistance to the Petitioners. Equally, careful perusal of the Honourable Supreme Court's decision relied upon, emphasizes that for safety and security, the authorities under the Motor Vehicles Act must devise appropriate measures. One of these measures is affixation of number plates in peculiar style, marks, issuance of smart cards, etc.. The details of the smart cards issued to individuals are not sought in this case. Therefore, there is no violation of the rules or the elements of secrecy and confidentiality attached to the smart cards. Hence, both decisions are distinguishable.

17 In the light of this conclusion, both Writ Petitions fail. Rule is discharged, but without any order as to costs.

18 At this stage, it is prayed that the ad-interim orders passed by this Court be continued so as to enable the Petitioners to challenge this judgment in a higher court. This request is opposed by the Respondent No.4. In such circumstances, the request made to continue the ad-interim orders is rejected and particularly, when the information as directed to be given under the impugned orders is as early as on 23.03.2011

(S.C. Dharmadhikari, J)